

Remarks (Merjan et al 10/730,385)

Reconsideration of this application, as amended, is respectfully requested.

Subheadings have been inserted in the specification.

The objections to claims 5 and 10 have been met by adding the word “A” as required.

Claim 1 has been amended to more clearly distinguish from the rejection on Dewitt in view of Fuentes. The rejection states

“it would have been obvious to modify the lower portion of the piling/body
[of DeWitt] to be uniformly tapered ...”

Accordingly, let us look at the DeWitt patent’s disclosure of the nature of that “lower portion of the piling/body”. DeWitt designates that lower portion by the general numeral 20 which “refers to an elongate ‘pre-formed concrete’ piling portion having one or more inter-connected sections”. DeWitt’s drawings show what may be a thin shell around at least the upper part of the concrete lower body, but his patent contains not a word about such a possible shell. The patent does not designate it by any reference character, and the patent does not describe its nature or function. And if it is indeed supposed to be a shell, it would be filled with concrete before driving and thus there would be no driving of a hollow shell, certainly not a hollow shell having at its bottom a closure constructed and arranged to substantially prevent ingress of the soil into a hollow body during the driving of the pile, a required by applicant’s claim 1.

DeWitt describes the upper shell portion 36 of his pile as having “relatively thin metal walls” (column 4 line 53) and his drawings seem to show that the layer (shell?) around the upper part of his lower portion has substantially the same thickness. He takes great

pains to make sure that the driving forces are not applied to that outer layer but are instead applied to his interior deformable elongated members 22 which are

“spaced inwardly away from the perimeter of the pre-formed portion thereby reducing the likelihood that non-axially applied tensile forces will cause the elongate members to spall the pre-formed portion.”

It seems quite clear, therefore, that DeWitt’s piles would not be constructed and arranged to be driven by hammer blows transmitted to the top of the layer (shell?) surrounding the top of his lower portion 20.

In the Office Action, the paragraph discussing DeWitt starts with a reference to

“a bottom portion of a hollow steel body”

and then says

“the steel body is filled with wet concrete after being driven into the ground (see Fig. 8)”.

However, the steel (?) body that “is filled with wet concrete after being driven into the ground” is not the “bottom portion” which is the subject of the preceding portion of that same paragraph of the Office Action. It is the upper “shell enclosure 36”. DeWitt’s hammer blows are definitely not applied to the top of that thin upper shell enclosure, as can be seen from DeWitt’s Figure 4, for instance.

Accordingly it is respectfully submitted that claim 1, particularly as now amended, clearly distinguishes from the combination of DeWitt and Fuentes.

With respect to the expression now added to claim 1, see, for instance, claim 19 of applicants’ ‘143 patent, which speaks (in its last three lines) of “hammer blows

transmitted to the top of said tapered bottom portion”; see also the paragraph beginning at column 3 line 41 of that ‘143 patent.

Filed herewith is a terminal disclaimer in compliance with 37 CFR 1.321 to overcome the double patenting rejection.

Claims 3 and 5 have been rewritten in independent form and are therefore believed to be allowable as indicated in paragraph 8 of the Office Action. It is noted that claim 3 originally included the limitations of original claim 2 (“regular”) and now omits that limitation (which is now in new claim 11). However, it is believed, from the tenor of the Office Action, that omission of that limitation does not affect the substantive allowability of the claim.

It is respectfully urged that this application is now in condition for allowance.

Respectfully submitted,